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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,656	02/14/2001	Harald Vater	JEK/VATER	7577

7590	06/13/2005	

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EXAMINER
DAVIS, ZACHARY A

ART UNIT	PAPER NUMBER
2137	

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Advisory Action **_Before the Filing of an Appeal Brief_**	09/700,656	VATER ET AL.
	Examiner	**Art Unit**	
	Zachary A. Davis	2137	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>20 May 2005</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

       Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ They raise the issue of new matter (see NOTE below);

   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.
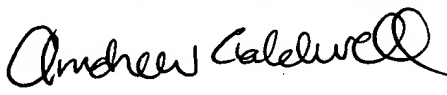
<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

ANDREW CALDWELL
SUPERVISORY PATENT EXAMINER

U.S. Patent and Trademark Office

PTOL-303 (Rev. 4-05)   Advisory Action Before the Filing of an Appeal Brief   Part of Paper No. 20050610

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive. Specifically, in reference to independent Claims 1, 22, and 34, Applicant argues that Dunlavy (US Patent 5297201) teaches away from the modification of Candelore (US Patent 6061449). Applicant further argues that Candelore hides the order of execution of program steps by changing the sequence in which data is retrieved from memory, while Dunlavy adds a parallel emulation circuit to generate masking radiation signals. Applicant appears to agree with the Examiner that Candelore does disclose that operations are performed in a manner in which the the data being processed cannot be determined from the detected signals that are produced. The Examiner believes that changing the sequence of data retrieval from memory does constitute a modification of execution of commands to prevent the commands from being inferred. The Examiner further believes that Dunlavy's teaching of masking the radiated signals does read on the limitation of Claim 1, recited in the alternative, that the "operating program commands are executed by the data carrier in such a way that the data processed with the corresponding commands cannot be inferred from the detected signals" (see Dunlavy, column 6, lines 42-47, as cited in the previous Office action).

In reference to Claims 5-12 and 26-33, Applicant further argues that Johnston (US Patent 6373946) does not modify a decryption algorithm to compensate for the masked keys. However, the Examiner notes that this limitation is not explicitly claimed. The Examiner believes that Johnston does read on the claimed limitation (recited in Claim 5, for example) that output data is combined with an auxiliary function value to compensate for the falsification of the input data (see Johnston, column 10, lines 38-53).